Error to Circuit Court, Botetourt County.

Edmond Thompson was convicted of murder in the first degree, and he brings error. Affirmed.

Willis, Adams & Hunter, of Roanoke, for plaintiff in error.

John R. Saunders, Atty. Gen., J. D. Hank, Jr., Asst. Atty. Gen., and *Leon M. Bazile, Second Asst. Atty. Gen.,* for the Commonwealth.

COFFMAN'S ADM'R *v.* COFFMAN et al.

Nov. 17, 1921.

[109 S. E. 454.]

1. **Wills (§ 488*)—Extrinsic Evidence Admissible in Aid of Interpretation of Ambiguous Will.**—Extrinsic evidence in aid of the interpretation of wills cannot be used if the will is plain and unambiguous, but where the language is susceptible of more than one interpretation, resort may be had to such evidence, subject to certain limitations.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 789.]

2. **Wills (§ 487 (2)*)—Extrinsic Evidence of Circumstances Concerning Testator's Property, Family Relationships, etc., Admissible, But Not His Declarations of Intention.**—Extrinsic evidence of facts and circumstances concerning testator, his property and family, claimants under the will, and their relation to him, etc., is admissible, in cases of disputed interpretation, to ascertain the meaning of the words as used and understood by testator.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 791.]

3. **Wills (§ 487 (3)*)—Evidence of Testator's Declarations of Intention Inadmissible, Except to Identify Persons or Things.**—Evidence of testator's declarations of intention is inadmissible, except to show which of two or more persons or things equally well described was meant by him.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 791.]

4. **Wills (§ 487 (2, 3)*)—Declarations of Intention to Exclude Collateral Kindred Held Inadmissible, but Evidence as to Family Relationships and Attitude toward Them Admissible.**—In a suit involving the construction of a will, where testator's sisters and brother, who were not mentioned, claimed, as heirs, property as to which they claimed he died intestate, testator's declarations as to his intent to exclude them from any share in his estate were inadmissible, but evidence showing his situation, particularly the character and value of his property, his family relationships, and his attitude toward claimants was admissible to determine his probable intent.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 791.]

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

5. Wills (§ 706*)—Exclusion of Extrinsic Evidence as to Testator's Attitude toward Heirs Claiming Property Alleged to Have Been Undisposed of Held Not Prejudicial.—In a suit involving the construction of a will, where testator's sisters and brother, who were not mentioned, claimed, as heirs, property as to which they claimed he died intestate, exclusion of evidence as to testator's declared purposes and intention was not prejudicial to claimants, whether or not the court intended thereby also to exclude evidence as to testator's situation and attitude toward them, where such evidence went no farther than to show his affection for his wife, the principal beneficiary, the number, names, and situation of his next of kin, the amount and kind of his property, and that owned by the other parties to the litigation.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 789.]

6. Wills (§ 487 (2)*)—Testimony as to Testator's Ill Will toward Collateral Kindred Not Relied on, Where Conflicting.—In a suit involving the construction of a will, where testator's sisters and brother, who were not mentioned, claimed, as heirs, property as to which they claimed he died intestate, testimony as to testator's ill will toward them which was so conflicting as to be of no value in arriving at his intention should not be relied on, since extrinsic facts, when necessary to aid in the construction of a will, should be clearly and satisfactorily established.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 789.]

7. Wills (§ 449*)—Presumption against Partial Intestacy Intensified Where General Residuary Clause Used.—The legal presumption is that testator intended to dispose of his entire estate, especially where he has used a general residuary clause, the courts being decidedly inclined against adopting a construction which leaves him intestate as to a part of his estate.

8. Wills (§ 449*)—Will Construed to Vest All of Testator's Estate in Wife, Subject to Payment of Specific Legacies.—Under a will bequeathing to testator's wife, in one sentence his entire interest in the farm on which they lived, and all bonds, notes, and money as long as she lived, and, in the next, $500 to each of her two nieces after her death, and the remainder of his effects to her to dispose of as she thought proper, it was testator's intention to give his entire interest in the farm to his wife, without limitation, and to limit her interest in the money, notes, and bonds for the sole purpose of designating a fund out of which the two legacies were to be paid, the two sentences, when read together, harmonizing perfectly with what testator might naturally have been expected to do, in view of his affection for his wife, the fact that his collateral kindred were already well provided for and advanced in years, and that none of them were re-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

ferred to in the will, and avoiding the intestacy which would otherwise result.

9. Wills (§ 616 (1)*)—Under Absolute Power in Devisee to Dispose of Remainder of Testator's Effects, Entire Residue of Estate Passes Despite Prior Devise of Life Estate.—Where a life estate is expressly given, language of other parts of the will will not be construed to enlarge such estate into an absolute estate, unless it is very clear, but if, by other terms in the same instrument, it is manifest that devisee is vested with absolute power to dispose of the subject at his will, he is not a mere life tenant, but absolute owner, so that, under a will bequeathing testator's entire interest in a farm and all his bonds, notes, and money to his wife as long as she lived, and specific legacies to two nieces, a subsequent provision leaving to the wife the remainder of his effects, to dispose of as she thought proper, expressed in reasonably clear and natural words testator's intention that the entire residue of the estate, real and personal, in possession and in remainder, should pass to his wife.

10. Wills (§ 575*)—Word "Effects" as Used in Residuary Clause of Will Held to Embrace Real Estate.—Though the word "effects" ordinarily refers to personal property, such term, as used in a will bequeathing to testator's wife his entire interest in a farm, and all his bonds, notes, and money as long as she lived, with legacies to two nieces after her death, and the remainder of his "effects" to his wife to dispose of as she thought proper, may fairly be construed to embrace real estate, the meaning of the term being determined by the context and surrounding circumstances.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Effects.]

Error to Circuit Court, Page County.

Suit between Rebecca S. Coffman's administrator, to construe a will. From the decree, the administrator brings error. Reversed and remanded.

Geo. N. Conrad, of Harrisonburg, for plaintiff in error.

Wm. F. Keyser and *H. V. Strayer,* both of Luray, for defendants in error.

RICHARDSON *v.* COMMONWEALTH.

Nov. 17, 1921.

[109 S. E. 460.]

1. Criminal Law (§ 982*)—Court Does Not Lose Control Over

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.